

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

UNITED STATES OF AMERICA,

VS.

CRIMINAL ACTION NO. 4:06CR124-P-B

**CHARLES BARRETT MERRILL,
WILBUR TYRONE PEER,
ERWIN DAVID RABHAN,
JIMMY WINEMILLER, AND
WILLIAM MITCHELL WINEMILLER,**

DEFENDANTS.

ORDER OF CONTINUANCE

These matters come before the court upon Defendant Erwin David Rabhan's motion to continue trial [162]. After due consideration of the motion, the court finds as follows, to-wit:

Trial is currently set for August 4, 2008. Defendant Rabhan seeks a continuance to allow additional time to await the Fifth Circuit Court of Appeals' ruling on the Government's August 20, 2007 interlocutory appeal of this court's July 18, 2007 order granting Defendant Rabhan's motion to dismiss count eight based on the statute of limitations. Oral arguments before the Fifth Circuit were held on June 4, 2008.

The Government has no objection to the instant motion to continue. Co-defendant Charles Barrett Merrill, however, filed a response in opposition to the continuance. Renewing his previous motion to sever, Defendant Merrill argues that the sole count of the Indictment implicating him, Count 1 (conspiracy), can be dispensed with in a bench trial since he has waived his right to a jury and is in bad health. These arguments were previously rejected by the court and the court once again finds Defendant Merrill's arguments unpersuasive, especially since Defendant Merrill is not incarcerated.

Because the interlocutory appeal affects other defendants' motions in this case, the court finds that this matter should be continued to accommodate the "delay resulting from any interlocutory appeal" pursuant to 18 U.S.C. §§ 3161(h)(1)(E) and (h)(7) (excluding from the Speedy Trial Act clock "[a] reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and no motion for severance has been granted."). The court finds that this is a reasonable period of delay since there are multiple co-defendants, no motion for severance has been granted, and the Fifth Circuit's ruling on the Government's interlocutory appeal may affect one or more of the co-defendants' pending motions.

IT IS THEREFORE ORDERED AND ADJUDGED that:

(1) Defendant Erwin David Rabhan's motion to continue trial [162] is **GRANTED**;

(2) Pursuant to 18 U.S.C. §§ 3161(h)(1)(E) and (h)(7), trial of this matter is **CONTINUED** as to all defendants from August 4, 2008 to October 6, 2008 at 9:00 a.m. in the United States Courthouse in Greenville, Mississippi;

(4) The period from August 4, 2008 to October 6, 2008 is excluded from the Speedy Trial Act considerations as set out above;

(5) The deadline for filing pretrial motions is September 15, 2008; and

(6) The deadline for submitting a plea agreement is September 21, 2008.

SO ORDERED, this the 7th day of July, A.D., 2008.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE